

REMARKS

The pending Office Action was reviewed carefully, before preparing this response. Reconsideration is respectfully requested. Nonetheless, in light of the positions presented herein, this application is believed to be in condition for allowance.

Applicants appreciate the withdraw of several §§ 112 and 102 rejections. Claims 13 and 16 remain rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicants appreciate the Examiner's concern and the subject claims are hereby amended. Support for the amendment to Claim 16 can be found throughout the specification, in particular on pages 10 and 13.

Claims 1-17 were rejected under 35 U.S.C. § 103 as unpatentable over Marshall in view of Osaka. Applicants appreciate the Examiner's concern, but respectfully disagree. This combination of references does not establish *prima facie* obviousness, and the rejection should be withdrawn.

In a determination of obviousness, a prior art reference must be considered in its entirety. It is impermissible within the framework of § 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of what that reference would fairly suggest to one skilled in the art. Here, Marshall is directed to a fermented soybean product without a chalky or otherwise unpleasant mouth-coating texture prevalent in the art. (See, column 1 at lines 15-21 and column 2 at lines 18-26.) Toward that end, Marshall describes various process parameters: most importantly, the requirement that fermentation be carried out between pH 6.0 and pH 7.0. More specifically, Marshall states that soy protein begins to precipitate at a pH below 6.0 (column 5 at lines 1-8).

However, consideration of Osaka shows that, in this area of the chemical arts, effect of pH on a fermented soy material is unpredictable. While a pH below 6.0 is unacceptable in Marshall, Osaka describes a wide pH range, including pH parameters much below 6.0. For instance, in example 4 and as cited by the Examiner, a pH of 3.6 was desired for the subject fermented milk product. (See, Osaka, column 6 at

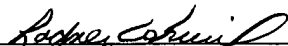
lines 15-44.) Marshall, Osaka and other art in this area show an infinite number of processing approaches can be taken, depending upon choice of soybean product. Such unpredictability precludes application of an approach for one product (e.g., soy cream cheese in Marshall) to another (e.g., fermented soy milk in Osaka).

There is no reasonable expectation that combination of Marshall with Osaka would provide beneficial results. The record shows quite clearly that there would be no reason for one skilled in the art to begin with the method of Marshall only to change the very feature (pH above 6.0) that gives Marshall its advantage. To the contrary, there is no motivation to combine Marshall with Osaka, and there is no motivation to do what Applicants have done.

It is respectfully suggested that the Examiner did not follow the post-*KSR International* guidelines for determining obviousness. As discussed above, proper consideration of such guidelines shows that there is no *prima facie* obviousness. Accordingly, the rejection should be withdrawn, with the subject claims allowed to proceed toward issue.

This application is believed to be in condition for allowance. Consistent therewith, favorable action is respectfully requested. The Examiner is invited to contact the undersigned by telephone should any issue remain. Thank you for your time and consideration.

Respectfully submitted:



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